United States Vs. Quiver

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Appellant : United States

Respondent : Quiver

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United States v. Quiver

No. 682

Submitted April 28, 1916

Decided June 12, 1916

241 U.S. 602

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH DAKOTA

SYLLABUS

The policy reflected by the legislation of Congress and its administration for many years is that the relations of the Indians among themselves are to be controlled by the customs and laws of the tribe, save when Congress expressly or clearly directs otherwise.

Section 316 of the Penal Code does not embrace the offense of adultery committed by one Indian with another Indian on an Indian reservation.

The facts, which involve the construction and application of certain provisions of the act of March 3, 1887, and 316, Penal Code, are stated in the opinion.

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MR. JUSTICE VANDEVANTER delivered the opinion of the Court.

This is a prosecution for adultery committed on one of the Sioux Indian Reservations in the State of South Dakota. Both participants in the act were Indians belonging to that reservation. The statute upon which the prosecution is founded was originally adopted as part of the Act of March 3, 1887, c. 397, 24 Stat. 635, and is now 316 of the Penal Code. The section makes no mention of Indians, and the question for decision is whether it embraces adultery committed by one Indian with another Indian on an Indian reservation. The district court answered the question in the negative.

At an early period, it became the settled policy of Congress

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to permit the personal and domestic relations of the Indians with each other to be regulated, and offenses by one Indian against the person or property of another Indian to be dealt with, according to their tribal customs and laws. Thus, the Indian intercourse acts of 1796, c. 30, 1 Stat. 469, and 1802, c. 13, 2 Stat. 139, provided for the punishment of various offenses by white persons against Indians and by

Indians against white persons, but left untouched those by Indians against each other, and the Act of 1834, c. 161, 4 Stat. 729, while providing that

"so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States shall be in force in the Indian country,"

qualified its action by saying, "the same shall not extend to crimes committed by one Indian against the person or property of another Indian." That provision, with its qualification, was later carried into the Revised Statutes as 2145 and 2146. This was the situation when this Court, in *Ex Parte Crow Dog,* 109 U. S. 556 , held that the murder of an Indian by another Indian on an Indian reservation was not punishable under the laws of the United States, and could be dealt with only according to the laws of the tribe. The first change came when, by the Act of March 3, 1885, c. 341, 9, 23 Stat. 385, now 328 of the Penal Code, Congress provided for the punishment of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny, when committed by one Indian against the person or property of another Indian. In other respects, the policy remained as before. After South Dakota became a state, Congress, acting upon a partial cession of jurisdiction by that state, c. 106, Laws 1901, provided by the Act of February 2, 1903, c. 351 32 Stat. 793, now 329 of the Penal Code, for the punishment of the particular offenses named in the Act of 1885 when

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committed on the Indian reservations in that state, even though committed by others than Indians; but this is without bearing here, for it left the situation in respect of offenses by one Indian against the person or property of another Indian as it was after the Act of 1885.

We have now referred to all the statutes. There is none dealing with bigamy, polygamy, incest, adultery, or fornication which in terms refers to Indians, these matters always having been left to the tribal customs and laws and to such

preventive and corrective measures as reasonably could be taken by the administrative officers.

But counsel for the government invite attention to the letter of the statute, and urge that adultery is not an offense "by one Indian against the person or property of another Indian," and therefore is not within the exception in 2146 of the Revised Statutes. It is true that adultery is a voluntary act on the part of both participants, and, strictly speaking, not an offense against the person of either. But are the words of the exception to be taken so strictly? Murder and manslaughter are concededly offenses against the person, and much more serious than is adultery. Was it intended that a prosecution should lie for adultery, but not for murder or manslaughter? Rape also is concededly an offense against the person, and is generally regarded as among the most heinous, so much so that death is often prescribed as the punishment. Was it intended that a prosecution should lie for adultery, where the woman's participation is voluntary, but not for rape, where she is subjected to the same act forcibly and against her will? Is it not obvious that the words of the exception are used in a sense which is more consonant with reason? And are they not intended to be in accord with the policy reflected by the legislation of Congress and its administration for many years, that the relations of the Indians among themselves -- the conduct of one toward another -- is to be controlled by the customs and laws of

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the tribe, save when Congress expressly or clearly directs otherwise? In our opinion, this is the true view. The other would subject them not only to the statute relating to adultery, but also to many others which it seems most reasonable to believe were not intended by Congress to be applied to them. One of these prohibits marriage between persons related within, and not including, the fourth degree of consanguinity, computed according to the rules of the civil law, and affixes a punishment of not more than fifteen years' imprisonment for each violator. To justify a court in holding that these laws are to be applied to Indians, there should be some clear provision to that effect. Certainly that is not so now. Besides, the enumeration in the acts of 1885 and 1903, now 328 and 329 of the Penal

Code, of certain offenses as applicable to Indians in the reservations, carries with it some implication of a purpose to exclude others.

Judgment affirmed.